IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.11.2006

CORAM:

THE HONOURABLE MR.**JUSTICE P.SATHASIVAM**

and

THE HONOURABLE MR.**JUSTICE S. MANIKUMAR**

W.A.Nos.1213 to 1220, 1223 to 1228, 1604 to 1607, 2044 of 1999, 100 to 102, 313 of 2001

and

W.P.Nos.10365 of 1999, 6265, 7334, 11899, 11900, 13060, 14648, 16547, 17066 of 2000, 592, 722, 828, 878, 905, 1847, 1848, 2673, 2778, 2787, 8349, 8448, 8635, 11781, 11785 of 2001,7003 of 2002,9126 of 2003,35004 of 2004 & 25556 of 2004 and WPMP.Nos.9361, 10870, 23986 of 2000

and 3812 of 2001.

W.A.No.1213 of 1999:

Maria Grace Rural Middle School
Venkatarayapuram, Nanguneri Taluk
Tirunelveli Kattabomman District
rep. by its Correspondent
Rev.Fr. A. Antony Raj.

.. Appellant

vs.

1. The Government of Tamil Nadu
rep. by its Secretary, Education
Science and Technology Department
Fort St. George, Chennai 600 009. ... 1st Respondent in all Appeals
4th Respondent in W.A.2044/99

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2. The Director of Elementary Education
College Road, Chennai 600 006. ... Ist Respondent in W.A. 2044
2nd Respondent in W.A.Nos.1213, 1214, 1216, 1218, 1219, 1604, 1605 to 1607 and 101 and 313/99

3. The District Elementary Educational Officer, Tirunelveli 2,
Tirunelveli Kattabomman District. ... 3rd Respondent in W.A.1213/99

4. The Assistant Educational Officer
Nanguneri Range, Nanguneri Post
Tirunelveli Kattabomman District.
..4th Respondents in W.A.1213/1999

B.M.Primary School,
rep. by its Correspondent,
K.Ushakumari ..Appellant in WA No.1214/99

The Society for the Minority People
Movement improving Development in
serveral aspects, rep. by its
President v.Sheela Rani ..Appellant in WA No.1215/99

Indian Primary School, rep. by its
Manager & Correspondent,
Rev. Dr.Francis M.Vincent,
Sivanthaman,Kanayakumari ..Appellant in WA No.1216/99

Christhu Raja High School,
rep. by its Correspondent/
Head Masterd Rev.Bro.
M.D.Sebastain ..Appellant in No.WA 1217/99

Indian Primary School
Parakkingel,
rep. by its Manager &
Correspondent,
Rev. Dr.Francis M.Vincent
Kanyakumari ..Appellant in WA No.1218/99

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Indian Primary School, rep. by
its Manager & Correspondent,
Rev.Dr.Francis M.Vincent
Kotturkonam, Kanyakumari ..Appellant in WA No.1219/99

St. Antony's High School,
rep. by its Correspondent,
Rev.Fr. Dasapanoor,
Alavanthankulam, Tirunelveli ..Appellant in WA No.1220/99

Rev. Fr. Camillus S.D.B.
Provincial and Chairman,
The South India Salesian Society
Madras, Manager St. Michaels
High School, Madakkottai
Thanjavur ..Appellant in WA No.1223/99

Rev. Fr.Camillus S.D.B.
Provincial and Chairman
The South India Salesian Society,
Madras -10, Manager Don Bosco
High School, Sagayathottam
North Arcot District. ..Appellant in WA No.1224/99

Rev. Fr. Camillus S.D.B.
Provincial and Chariman
The South India Salesian Society,
Madras Manager, Don Basco
High School, Thirumalpuram,
Madurai ..Appellant in WA No.1225/99

Rev. Fr. Camillus S.D.B.
Provincial and Chairman
The South India Salesian Society,
Madras 10, Manager Don Bosco,
High School, Jolarpettai,
North Arcot District. ..Appellant in WA No.1226/99

Rev. Fr. Camililus S.D.B.
Provincial and Chairman,
The South Indian Salesion Society
Madras 10, Manager Don Bosco
High School,Manakkal,Lalgudi
Tiruchi. ..Appellant in WA No.1227/99

Rev. Fr. Camillus SDB,
Provincial and Chairman,
The South India Salesion Society,
Madras Pallithammam, Sivaganga ..Appellant in WA No.1228/99

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St. Stephen Middle School
Bagavathipuram Puliyarai
Shengottai Taluk, Nellai Katttabamman .Appellant in WA No.1604/99

Immanual Model Middle School
rep. by its Correspondent ,
Tenkasi, Tirunelveli ..Appellant in WA No.1605/99

St. Antony's Middle School
LIC Colony Anaiyur Panchayat
by its Correspondent P.Ponnuthai ..Appellant in WA No.1606/99

Christian Assembly Welfare and
Educational Society rep. by its
President C.Rajan,
Tenkasi Tirunelveli ..Appellant in WA No.1607/99

The Roman Catholic Society of the
Brothers of the Sacred Heart of Jesus
Palayamcottai, Tirunelveli, rep. by its
Correspondent, Rev..Brother D.Britto Peter
Boniface, Vadipatti, Madurai. ..Appellant in WA No.2044/99

M.Gurnathan Annai Indira Gandhi
Memorial High School, Rajapalayam,
Virudunagar ..Appellant in WA 100/2001

Aided Middle School rep. by its
Secretary /Correspondent,
Madakudy, Thanjavur ..Appellant in WA 101/2001

Jothi High School
(Minority Institution)
Solaichery
rep. by its Correspondent
Sankarankoil Appellant in WA.102/01.

M/S. Saraswthi Middle School
rep by its Manager K.Murugan
Tethakudi South,
Nagai Appellant in WA.313/01.

VS

1. The Joint Director of School Education,
(Secondary) College Road, Chennai 2nd Respondent in WA.1215/99, 100/01

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2. The Director of School Education,
College Road, Chennai - 6. — 2nd Respondent in Wa.1217/99, 1220, 1223, 1224, 1225, 1226, 1227, 1228/99, 102/01.

The District Elementary Educational Officer,
RMS Road, Madurai — 2nd Respondent in WA.2044/99.

The District Elementary Education Officer
Nagapattinam — 2nd Respondent in WA.313/01

3. The District Elementary Educational officer,
Nagercoil. — 3rd respondent in WA.1214/99 1216, 1218, 1219/99

The Chief Educational Officer,
Cuddalore — 3rd Respondent in WA.1215/99

The Joint Director of School Education
(Secondary)
College Road, Chennai — 3rd Respondent in WA.1217/99, 1220/99.

The Chief Educational Officer,
Tanjore — 3rd Respondent in WA.1223/99.

The Chief Educational Officer,
Vellore — 3rd Respondent in WA.1224/99, 1226./99

The Chief Educational Officer,
Madurai — 3rd Respondent in WA.1225/99.

The Chief Educational Officer,
Tiruchirappalli — 3rd Respondent in WA.1227/99.

The Chief Educational Officer,
Sivagangai — 3rd Respondent in WA.1228/99

The Joint Director of Elementary Education,
College Road, Madras - 6. — 3rd Respondent in WA.1604/99, 1607./99

The District Elementary Educational Officer
Palayamkottai, Tirunelveli — 3rd Respondent in WA.1605/99

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The District Educational Officer,
RMS Road, Madurai 3rd Respondent in Wa.1606/99

The Additional Assistant Educational Officer,
Vadipatti, Madurai 3rd Respondent in WA.2044/99

3. Director of Elementary Education,
Chennai - 6

4. Cheif Educational Officer,
Virudunagar

5. The District Educational Officer,
Virudunagar

6. District Elementary Educational Officer,
Virudunagar.

7. The Additional Assistant Elementary Educational Officer,
Rajapalayam Respondents 3 to 7 in WA.100/01

The District Elementary Educational Officer,
Thanjavur 3rd Respondent in WA.101/01

The Chief Educational Officer,
Thanjavur 3rd Respondent in WA.102/01.

The Assistant Elementary Education Officer,
Vedaranyam, Nagai 3rd Respondent in WA.313/01.

4) THE ADDITIONAL ASSISTANT ELEMENTARY EDUCATIONAL OFFICER, KUZHITHURAI RANGE
KANYAKUMARI .. 4th RESPONDENT IN WA NO. 1214/99

THE DISTRICT EDUCATIONAL OFFICER
CUDDALORE .. 4th RESPONDENT IN WA NO. 1215/99

THE ASSISTNAT EDUCATIONAL OFFICER
COLACHAL RANGE COLACHEL
KANYAKUMARI DISTRICT .. 4th RESPONDENT IN WA 1216/99

THE DISTRICT EDUCATIONAL OFFICER
TIRUNELVELI .. 4th RESPONDENT IN WA 1217/99 AND 1220/99

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THE ASSISTANT EDUCATIONAL OFFICER
NAGERCOI RANGE NAGERCOIL .. 4th RESPONDENT IN WA 1218/99

THE ASSISTANT EDUCATIONAL OFFICER
THIRUVATTAR RANGE, THIRUVATTAR 4th RESPONDENT IN WA NO. 1219/99

THE DISTRICT EDUCATIONAL OFFICER
TANJAORE .. 4th RESPONDENT IN WA NO. 1223/99

THE DISTRICT EDUCATIONAL OFFICER
CHEYYAR .. 4th RESPONDENT IN WA NO. 1224/99

THE DISTRICT EDUCATIONAL OFFICER
MADURAI NORTH, MELUR .. 4th RESPONDENT IN WA NO. 1225/99

THE DISTRICT EDUCATIONAL OFFICER
THIRUPATHUR .. 4th RESPONDENT IN WA NO. 1226/99

THE DISTRICT EDUCATIONAL OFFICER
LALGUDI, TIRUCHIRAPPALLI .. 4th RESPONDENT IN WA NO. 1227/99

THE DISTRICT EDUCATIONAL OFFICER
SIVAGANGA .. 4th RESPONDENT IN WA NO. 1228/99

THE CHIEF EDUCATIONAL OFFICER
TIRUNELVELI .. 4th RESPONDENT IN WA NO. 1604/99

THE DISTRICT EDUCATIONAL OFFICER
TENKASI ..5th RESPONDENT IN WA NO. 1604/99

THE ADDITIONAL ASSISTNAT EDUCATIONAL
OFFICER, TENKASI .. 4th RESPONDENT IN WA NO. 1605/99

ADDITIONAL ASSISTNAT
EDUCATIONAL OFFICER
(ELEMENTARY) MADURAI WEST
SELLUR, MADURI .. 4th RESPONDENT IN WA NO. 1606/99

THE DIRECTOR OF ELEMENTARY
EDUCATION, TIRUNELVELI .. 4th RESPONDENT IN WA NO. 1607/99

THE ADDITIONAL Assistant EDUCATIONAL
OFFICER, TENKASI .. 5th RESPONDENT IN WA 1607/99

THE ADDITIONAL ELEMENTARY
EDUCATIONAL OFFICER, KUMBAKONAM 4th RESPONDENT IN WA 101/01

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THE DISTRICT EDUCATIONAL OFFICER
TIRUNELVELI .. 4th RESPONDENT IN WA 102/01

1. THE CORRESPONDENT
RC MIDDLE SCHOOL, KUTHAPANCHAN
ALNGULAM TALUK, TIRUNELVELI

2) THE PRESIDENT
PARENTS TEACHERS ASSOCIATION
R.C. MIDDLE SCHOOL, KUTHAPANCHAN, ALANGULAM
TIRUNELVELI .. PETITIONERS IN WP 10365/99

1) INDIAN PRIMARY SCHOOL,
SIVANTHAMAN REP BY ITS MANAGER
CORRESPONDNET REV. DR. FRANCIS M. VINCENT

2. INDIAN PRIMARY SCHOOL
REP BY ITS MANAGER OF CORRESPONDENT
REV. DR. FRANCIS M. VINCENT
KOTTURKONAM, KANYAKUMARI

THE INDIAN PRIMARY SCHOOL
REP BY ITS MANAGER/CORRESPONDENT
REV DR. FRANCIS M. VINCENT
PARAKKINGAL, KANYAKUMARI .. PETITIONERS IN WP 6265/00

ANNAI SATHYA MIDDLE SCHOOL
REP BY ITS CORRESPONDENT
V. VICTOR BALACHANDAR
CHIDAMBARAM . PETITIONER IN WP 7334/00

PARAMANANDA MIDDLE SCHOOL
T.N. PUTHUKUDI REP BY ITS
SECRETARY ANNATHAI SELVAMANI .. PETITIONER IN WP 11899/00

RAMASAMY MEMORIAL MIDDLE SCHOOL
REP BY ITS SECRETARY G. GANESAMOORTHY
VASUDEVANALLUR, TIRUNELVEI .. PETITIONER IN WP N. 11900/00

THE SOUTH INDIA SALESIAN SOCIETY
REP BY ITS PROVINCIAL AND CHAIRMAN
REF FR. BELLARMINE FDO, SDB, CHENNAI .. PETITIONER IN WP NO. 13060/00

THE CHURCH OF SOUTH INDIA TRUST
ASSOCIATES, TIRUCHIRAPPALLI THANJAVUR
DIOCESE REP BY ITS BISHOP
LT. REV. D. JAMES SRINIVASAN
TIRUCHIRAPPALLI .. PETITIONER IN WP NO. 14648/00

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1. THE CORRESPONDENT
CHRISTIAN MIDDLE SCHOOL, PALLIYADI
KANYAKUMARI

2. THE PRESIDENT
PARENT TEACHERS ASSOCIATION
CHRISTIAN MIDDLE SCHOOL
PALLIYADI, KANYAKUMARI ... PETITIONER IN WP 16547/00

1. THE CORRESPONDENT
ST. THOMAS PRIMARY SCHOOL
CHINNAMUTTOM

2. THE PRESIDENT
PARENT TEACHERS ASSOCIATION
ST. THOMAS PRIMARY SCHOOL
CHINNAMUTTOM .. PETITIONER IN WP 17066/00

1. THE CORRESPONDENT
VIYAGULA ANNAI PRIMARY SCHOOL
VILLUKIRY K.K. DISTRICT

2. THE PRESIDENT
PARENT TEACHERS ASSOCIATION
VIYAGULA ANNAI PRIMARY SCHOOL
VILLUKIRY K.K. .. PETITIONERS IN WP 592/01

THE SECRETARY
PERUNTHALIVAR KAMARAJ PRIMARY SCHOOL
VIRUDHUNAGAR

THE PRESIDENT
PARENT TEACHERS ASSOCIATION
PERUNTHALIVAR KAMARAJ PRIMARY SCHOOL
VIRUDHUNAGAR .. PETITIONERS IN WP NO. 722/01

1. THE CORRESPONDENT
ST. HELENAS HIGH SCHOOL
ENAYAM, K.K. DISTRICT

2. THE PRESIDENT
PARENT TEACHERS ASSOCIATION
ST. HELENAS HIGH SCHOOL
ENAYAM .. PETITIONER IN WP 828/01

1. THE CORRESPONDENT
ST. MICHAEL PRIMARY SCHOOL,
ALENCODE, K.K. DISTRCT

2. THE PRESIDENT
PARENT TEACHERS ASSOCIATION

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ST. MICHAEL PRIMARY SCHOOL
ALENCODE, K.K. DISTRICT .. PETITIONER IN WP NO. 878/01

1. THE CORRESPONDENT
RC MIDDLE SCHOOL
KUTHAPANCHAM, TIRUNELVELI

THE PRESIDENT
PARENT TEACHERS ASSOCIATION
RC MDDILE SCHOOL
KUTHAPANCHAN, ALANDGULAM .. PETITIONER IN WP NO.905/01

1. THE CORRESPONDENT
ST. PETERS MIDDLE SCHOOL, KADIAPATTANAM
KANYAKUMARI

2. THE PRESIDENT
PARENT TEACHERS ASSCIATION
ST. PETERS MIDDLE SCHOOL
KADIAPATTANAM .. PETITIENR IN WP 1847/01

1. The Correspondent
St Theresa's Primary School,
Aruguvilai, Nagercoil.

2. The President,
Parent Teachers Associates,
St Theresa's Primary School,
Aruguvilai, Nagarcoil ...Petitioners in WP.1848/01

1. The Corresponent,
St Ignatius High School,
Kurumbanai, Kanyakumari.

2. The President,
Parant Teachers Associates,
St Ignatius High School,
Kurumbanai ...Petitioner in WP.2673/01

1. The Correspondent,
St Marys Middle School
Kanavoor, Udayamarthandam,
Kanyakumari

2. The President,
Parent Teachers Associates,
St Marys Middle School,

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Kanavoor, Udayamarthandam,
Kanyakumari ...Petitioner in WP.2778/01

1. The Correspondent,
St Jasephs High School,
Ramanthurai
KK District

2. The President,
Parent Teachers Associates,
St Jasephs High School,
Ramanathurai
KK District ...Petitioner in WP.2787/01

P.S. Kumarasamy Raja Memorial
Girls High School,
rep by its Secretary,
Sakthi Nagar, Rajapalayam,
Virudunagar, ...Petitioner in 8349/01

The correspondent
Sir John D Monte Primary School
Kovalam, Kancheepuram ...petitioner in WP.8448/01

The Correspondent
st. Joseph's Higher Secondary School,
Kovalam ...Petitioner in WP.8635/01

The Correspondent
Annai Vailankanni High School,
Sastri Nagar
Chennai 39. ...Petitioner in WP/11781/01

The Correspondent
Annai Vailankanni Primary School,
Sastri Nagar
Chennai 39. ...Petiioner in WP.No. 11785/01

The Correspondent
St Antonys RCM Middle School
Udaiyarkuppam
Thiruvannamalai ...Petitioner in WP.No.7003/02

Association of Managers of Aided and
Unaided recognised High Schools,
and Higher Secondary Schools
rep by its Secretary M. Sadasivam
Rajapalayam, Virudunagar. ...Petitioner in WP.No.9126/03

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Association of Management of
Hindu Educational Institution
Tamil Nadu rep by Secretary
Shri Ramakrishna Ashram
Madurai ...Petitioner in WP.no.35004/04

The South India Salesian Society
rep by its provincial & Chairman
rev Fr Stainslaws
Citadel Chennai 10 ...Petitioner in WP.25556/06

vs

1. The state of Tamil Nadu rep by its Secretary
Education Dept., Fort St George, Chennai.
...1st Respondent in all WPs

2. The Director of Elementary Education,
College Road, Chennai.
...2nd Respondent in WP.10365/99,
6245. 11899, 11980, 13060, 14648,
16547, 17066/00, 592/01, 772,
878, 905, 1847, 1848, 2778, 8448
and 7334/00

3. The District Elementary Education Officer,
Tirunalveli at Palayamkottai.
...3rd Respondent in
WP.No.10365/99 905/01

The District Elementary Education Officer,
Nagercoil ...3rd Respondent in WP.No.6245/00
16547' 17066/00, 592/01, 878,
1847, 1848, 2778/00

The District Elementary Education Officer,
Cuddalore ...3rd Respondent in WP.7334/00

The Assistant Educational Officer,
Kavarachi Range,
Cuddalore. 4th Respondent in WP.7334/00

The Director of School Education,
(Secondary) College Road, Chennai 6
...3rd Respondent in WP.14648/00

The District of Elementary Education Officer,

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Virudunager ...3rd Respondent in WP.722/01

The Director of School Education,
College Road, Chennai 6

The District of Educational Officer,
Kuzhithurai K.K district ...Respondents 2 & 3 in WP.828/01

The Director of School Education,
College Road, Chennai 6

The District of Educational Officer,
Thuckalay KK. ...Respondent 2 & 3 in WP.2673/01

The Director of School Education,
College Road, Chennai 6.

The District of Educational Officer,
Kuzhithurai, KK District ...Respondents 2 & 3 in WP.2787/01

The Director of School Education,
Chennai.

The Chief Educational Officer,
Virudunagar.

The District Educational Officer,
Virudunagar. ...Respondents 2 to 4 in WP.8349/01

The District of Elementary Education Officer,
Kancheepuram. ...3rd Respondent in WP.8448/01

The Joint Director of Higher Secondary Education,
College Road, Chennai

The Chief Educational Officer,
Kancheepuram

The District Educational Officer
Chengalpattu. ...Respondent 2 to 4 in WP.8635/01

The Director of School Education,
College Road, Chennai

The District Educational Officer,
Chennai 6. ...Respondent 2 & 3 in WP.11781/01

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The Director of Elementary Education,
College Road, Chennai 6.

The District Elementary Educational Officer,
Chennai 6. ...Respondent 2 & 3 in WP.11785/01

The Director of Elementary Education,
College Road, Chennai

The Distict Elementary Educational Officer,
Thiruvannamalai. ...Respondent 2 & 3 in WP.No.7003/02

Secretary to the Government of TN.,
Law Department,
Fort St George, Chennai. ...2nd Respondent in WP.9126/03

The Director of School Education,
College Road, Chennai 6

The Director Elementary Educational,
Colleger Road, Chennai 6.
...Respondent 2 & 3 in WP.35004/04

The Director of School Education,
Colleger Road, Chennai ...2nd Respondent in WP.25556/06

Writ Appeals are filed under Clause 15 of the Letter paten against the order passed in W.P.No.4237 of 1996 8907/98,19193, 17651 20410,17653, 17652, 20399/98, 14019/97, 14020 to 14024/98, 6781/93 18575/98, 471/99, 16262/95, 15497/99, 7946/98, 517/99. 18198/97 an 638/00 dated 22.03.1999 made by His Lordship the Hon'ble Mr. Justic P. Shanmugham.

Writ Petitions filed under Article 226 of the Constitution o India praying for issuance of a writ of certiorarified mandamus a stated therein.

Petition presented to this Court, under Article 226 of th Constitution of India to issue Writ of 1) Mandamus, directing th respondents herein to sanction and release forthwith grant in and t the petitioners middle school with effect from its recognition in Jun 1994, in WP 10365/99.

2) Declaration, declaring that the Act 11/99 in so far as th section 2(b) and 6 introducing section 14(a) of the Tamilnad recognised Private Schools (Regulation) Act 1973 is illegal unconstitutional void in so far as the petitioner schools ar concerned (in WP 6265/2000, 7334, 9126/03)

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3) Mandamus, directing the respondent, their agents an subordinates to forbear from giving effect to the Section 1(2)(a) an 2(b) and Section 6 of the Amendment Act 11/99 called the Tamilnad recognised Private schools (regulation) Amendment Act 1998 to sectio 14 of the Principal Act (ie) the Tamilnadu recognised Private School regulation Act, 1973 in so far as the petitioner is concerned (in W 11899/00, 11900, 13060, 14648/00).

4) Declaration, declaring section 6 read with Section 1(2)(b) o the Tamilnadu recognised private Schools (regulation) Amendment Ac 1998 (Act No. 11 of 1999) introducing Section 14-A in the Tamilnad recognised Private Schools (regulation) Act 1973 with effect fro 1991-1992) as ultravires, null and void and further direct th respondents herein to extend grant in and to the petitioner school b sanctioning one post of Headmistress

(a) seven posts of secondary Grade Teachers and one post of craf teacher and releasing salaries from their respective dates o appointments. (in WP 16547/00)

(b) and four posts of secondary Grade Teachers and releasin salaries from their respective dates of appointments (in WP 17066/00 592/01, 722/01, 878/01).

(c) two posts of B.T. Assistants, one post of Physical Directo (High School), one post each of Junior Assistant, Office Assistant Sweeper and Watchman and releasing salaries from their respectiv dates of appointments (in WP 828/01)

(d) Middle School with effect from its recognition in June 1994 (in WP 905)

(e) Headmaster (Middle School) and three posts of Secondary grad teachers Assistants and releasing salaries from their respective date of appointment (in WP 1847/01)

(f) and four posts of Secondary Grade teachers with effect fro its recognition in 1990 and releasing salaries from their respectiv dates of appointment (in WP 1848/01)

(g) (High School) two posts of B.T. Assistants, one post o Physical Director (High School), one post each of Junior Assistant Record Clerk, Office Assistant, Sweeper, and watchman, and releasin salaries from their respective dates of appointment (in WP 2673/01)

(h) (Middle School) three posts of secondary grade Teachers an releasing salaries from their respective dates of appointments (in W 2778/01)

(i) (Middle School) three posts of B.T. Assistants one post o Tamil Pandit, one post of Physical Director (High School) one pos

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each of sewing Mistress, Record Clerk, Office Assistant and Sweeper and releasing salaries from their respective dates of appointment (i WP 2787/01)

(j) 9 P.G. Assistants Posts, 3 B.T. Assistants posts, one Tami Pandit Post, one P.E.T. Post, 7 Secondary Grade Assistant Post, on Junior Assistant Post one office Assistant Post, one Typist Post, on Lab Assistant Post, One Sweeper and one Sanitary Worker Post, (in W 8635/01)

(k) Seven posts of Secondary Grade teachers, one post of Tami pandit, and one post of Physical Education Teacher and releasin salaries from their respective dates of appointment (in WP 7003/02)

Certiorarified Mandamus, calling for the entire records relating to the impugned proceedings of the first respondent in his Proceedings of the first respondent in his Proceedings L.Dis.No. 73843/G3/2000 dated 21.9.2000 and quash the said impugned proceedings of the first respondent dated 21.9.2000 and consequently direct the respondents to pay the grant from the year 1991-92 and continue to disburse the grant to the petitioners school. (in WP 8349/01)

Certiorarified Mandamus, calling for the records pursuant to S.6 read with S.1(2)(b) of the Tamilnadu Private Schools regulation Act 1998 Act. No. 11 of 1999 and quash the same and thereby direct the respondents to releasel the grant for the petitioner school of 6 secondary grade posts. (in WP 8448/01)

Declaration, declaring section 6 read with section 1 (2)(b) of Tamilnadu Private School regulation Act 1998, (Act No. 11 of 1999) as unconstitutional, ultravires and null and void and direct the respondents to give grant in aid to the petitioner School by sanctioning grant for the posts of

1) 11 B.T. Assistants, 6 secondary Grade Assistants, one Junior Assistant, one office assistant, one Sweeper and one Typist post I(in WP 11781/01).

2) 16 Secondary Grade Teachers from their respective date of appointment and further direct to allot 6 more secondary grade posts (in WP 11785/01)

Declaration declaring that Section 14.A of the Tamilnadu recognised Private School (Regulation) Act 1973 in unconstitutional and ultravires as violative of article 14 and 21 and directive Principles of the Constitution of India in so far as the Petitioners

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Association is concerned and quash the same. (in WP 35004/04)

Mandamus, directing the respondents their agents and subordinates to forbear from giving effect to the section 1(2) (a) and 2(b) and section 6 of the Amendment Act No. 11/99 called the Tamilnadu recognised Private Schools (Regulation) Amendment Act 1998 to section 14 of the Principal Act (ie) The Tamilnadu recognised Private Schools regulation Act 1973 in so far as the Petitioners Don Bosco High School, Maranodai, Villupuram is concerned. (in WP 25556/06)

..

Mr. **K. Ravichandra Babu**, for appellant in WA.Nos.1213 to 1220 of 199 and for the petitioner in WP.Nos.6265 and 7334 of 2000.

Mr. **M. Joseph Thatheus Jerome** for appellant in WA.Nos.1223 to 1228 2044 of 1999 and for petitioner in W.P.Nos.14648 of 2000, 11899 11900, 13060 of 2000 and 25556 of 2006.

Mr. **V. Ramajagadeesan**, for appellant in W.A.Nos.1604 to 1607 of 1999.

Mr. **D. Rajendran**, for appellant in WA.Nos.100 to 102, 313 of 2001.

Mr. M. **Sriram** for petitioner in WP.No.8349 of 2001.

Mr. **Isaac Mohanlal** for petitioner in WP.Nos.16547, 17066 of 2000, 592 722, 828, 878, 905, 2778, 1847, 1848, 2673, 2787 of 2001, 7003 of 200 and 10365 of 1999.

Mr. **A. Immanuel** for petitioner in WP.No.9126 of 2003.

Mr. **S.N. Ravichandran** for petitioner in WP.No.35004 of 2004.

Mr. **I. Arokiasamy** for petitioner in WP.Nos.8448, 8635, 11781 and 1178 of 2001.

Mr. **R. Viduthalai**, **Advocate General** assisted by Mr. **M. Sekar**, **Specia Government Pleader** for respondents in W.A.Nos.1213 to 1228, 1604 t 1607, 2044 of 1999, 100 to 102, 313 of 2001 and all writ petitions.

सत्यमेव जयते

COMMON JUDGMENT

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(Judgment of the Court was delivered by **P.SATHASIVAM,J.**)

Since the issue in the writ appeals as well as the writ petition is one and the same, they are being disposed of by the followin common judgment.

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2. The writ appeals are filed against the common order date 22.03.1999 made in a batch of writ petitions, viz., W.P.Nos.6781 o 1993, etc., wherein the learned single Judge, after finding that th writ petitioners / Educational Institutions after the commencement o the academic year 1991-92 are not entitled to the grant of any Aid o the up-gradation of posts and salary for the teachers appointed upheld the Government Order and dismissed all the writ petitions.

3. In all the writ petitions, the petitioners / Educationa Institutions, Educational Agencies, Parent-Teachers Association challenge Section 14-A the Tamil Nadu Recognised Private School (Regulation) Act, 1973 (in short **"the Act"**), as inserted by Section read with Section 1(2)(b) of the Tamil Nadu Recognised Private School (Regulation) Amendment Act, 1998 as it is unconstitutional an violative of Articles 14, 21, 21-A, 30(2), 39, 41, 45 and 46 of th Constitution of India.

4. **Brief facts:-**

(a) Prior to the introduction of Tamil Nadu Recognised Privat Schools (Regulation) Act 1973 (Tamil Nadu Act 29 of 1974), Primary an Middle Schools were governed by the Tamil Nadu Elementary Educatio Act, 1920 (Tamil Nadu Act V of 1920), Tamil Nadu Panchayats Act, 1958 City Municipal Corporation Act, 1920 and Tamil Nadu Distric Municipalities Act, 1920.

(b) From the year 1964-65 onwards complete free education syste was introduced in the State. Aid to the management was given by way o grant to meet the entire expenditure incurred towards payment o salary to teachers through monthly teaching grant. While deficit gran was paid prior to 1964-1965, full grant was sanctioned from 1964-6 onwards. During 1973, Tamil Nadu Recognised Private School (Regulation) Act, 1973 and the Tamil Nadu Private Schools (Regulation Rules, 1974 came into operation governing recognised Aide institutions. According to Section 14 of the said Act and Rule 11 o the said Rules, aid was assessed for all the recognised institutions.

(c) According to Rule 1 of the Rules framed under the Tami Nadu Elementary Education Act 1920, the power to grant permission t open new schools, additional classes in the existing schools and t grant or withdraw recognition/aid to or from Elementary Schools vest with the Officers of the Education Department. High Schools wer governed by Madras Educational Rules, now called, Tamil Nad Educational Rules. The power of recognition of secondary and Highe Secondary Schools is vested with the Director of School Education.

(d) The Tamil Nadu Recognised Private Schools (Regulation) Ac 1973 and the Rules made thereunder now govern the aided Primary Middle, High and Higher Secondary Schools. Grant of aid to suc Schools is governed by the grant-in-aid code. Article 5 of the Grant

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in-aid code deals with the payment of Teaching grant/staff grant t all types of Recognised schools under private management.

(e) When the Non-Minority institutions have to get prio permission to open new institutions, the management of minorit institutions can open an Institution without prior permission an thereafter apply for the grant of recognition and aid. The minorit schools are covered by the Tamil Nadu Minority Schools (Recognitio and Payment of Grant) Rules, 1977. As per the Rules, no special statu is conferred on minority schools in respect of payment of grant, an Rule 6 categorically states that minority schools may be paid gran subject to the orders and instructions issued by the Government fro time to time.

(f) As a matter of policy, the Government of Tamil Nadu ha stopped payment of Grant to Elementary schools established in 1988 The Schools which applied for grant of permission to open ne schools/additions sections/ upgradation under the provisions of th Tamilnadu Recognised Private Schools (Regulation) Act, 1973 as matter of fact did not claim Grant from the year 1988 onwards for period of three years. On completion of the said three years grant wa sanctioned to some schools with effect from 01.06.1991 in a phase manner. Subsequently, due to the heavy financial burden confronted b the Government, it was again decided to dispense with the payment o Grant and accordingly, G.O.(4D) No.4 Education (R1) Department date 25.11.91 was promulgated dispensing with the payment of Grant and th payment of Grant was totally stopped. Therefore, the recognition an permission for the upgradation of various schools was accorded subjec to the above condition with infinite effect.

(g) In respect of minority schools, while applying fo recognition to start new schools, the condition as prescribed in G.O (4D) No. 4 dated 25.11.91 was uniformly adhered to. In fact, it wa made clear that no Grant will be given to the schools applying fo recognition from 25.11.91. Aggrieved by the said action of th Government, several minority schools filed W.P.No.6781 of 1993 etc. batch and by order dated 22.03.1999, the validity of the sai Government Order was upheld in respect of minority schools also. Sinc G.O.(4D) No.4 dated 25.11.91 was always under the threat of challenge with a view to safe-guard the same from further legal challenge, th Government thought to clothe the said Government Order with statutor power and accordingly, issued the Amendment Act No.11 of 1999, dul published in the Tamil Nadu Government Gazette, Extraordinary date 23.05.1999 by which Section 14-A was brought into existence. Therefor this Amendment was sought to take over and ratify the action take prior to 1999 and more particularly from 25.11.1991 onwards.

5. Heard the learned counsel for the appellants/petitioners a well as the respondents.

6. **Contentions raised by the learned counsel for th appellants/petitioners:**

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(i) The impugned provisions, viz., Sections 1(2)(b) and 6 of th Tamil Nadu Recognised Private Schools (Regulation) Amendment Act 1998 (Act 11 of 1999), inserting Section 14-A to Tamil Nad Recognised Private Schools (Regulation) Act, 1973, violate th fundamental rights enshrined under Part III of the Constitutio of India, particularly Articles 21, 21-A, 39, 41, 45 and 46;

(ii) The impugned provisions promote discrimination and hit b Articles 14 and 30(2) of the Constitution, since it permit tw classes of recognised private schools after 01.06.1991;

(iii) The State cannot try to achieve indirectly what it canno achieve directly (even the Legislature cannot do);

(iv) Paucity of funds cannot be a valid reason to deny State Ai to educational institutions, particularly offering education t children below the age of 14;

(v) The impugned provisions would frustrate the Scheme enunciate in the Act and Rules, since Free Education Policy is the hub o which the whole scheme rests, and as a corollary, the collectio of fee, charge or donation is prohibited;

(vi) The undertakings obtained from the schools at the time o granting recognition are non-est in law inasmuch as they wer obtained without free consent and without any statutory basis Hence, such undertakings cannot operate as estoppel against th plea of discrimination and constitutional rights.

7. **Reply by the learned Advocate General:**

(i) The impugned provisions does not suffer from an unconstitutionality;

(ii) Grant-in-aid is neither a fundamental right nor a statutor right;

(iii) Mandate under Article 21-A has been fulfilled by the Stat Government;

(iv) Grant-in-aid by the State to the Educational Institution depends upon the economic capacity of the State, and it is relevant factor;

(v) Policy decisions are exclusively within the executive domai and the policy taken by the State Government is reasonable, no violative of Article 14 and there is no arbitrariness;

(vi) Since the State Government has achieved Gross Rate Access o 100% with the assistance of recognised private schools already i existence during the academic year 1991-92, which were receivin aid from the State Government, it is but reasonable for th Government to continue grant-in-aid to these schools;

(vii) Paucity of funds is a valid reason for determining the cut off rate;

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(viii) The impugned provisions do not violate Article 30(1) an (2)of the Constitution as well as frustrate the Scheme of the Ac as claimed;

(ix) The Undertaking given by the Schools at the time of grant o recognition operate as estoppel against them.

8. Since the points raised are inter-connected, let us conside all of them in the following paragraphs. In order to appreciate th rival contentions, it is useful to refer the relevant statutor provisions of the Act and the Rules.

"**Section 14. Payment of grant.-**

(1) Subject to such rules as may be prescribed, the Government may continue to pay grant to the private school receiving grant from the Government, before the date of commencement of the academic year 1991-1992 at such rate and for such purpose as may be prescribed.

Explanation.- For the purposes of this sub-section, private school receiving grant from the Government shall also include a private school receiving grant from the Government only in respect of any class or course of instruction.

"Section 14-A. Grant not payable to new private schools and new class and course of instruction.-

Notwithstanding anything contained in this Act or in any other law for the time being in force in any judgment, decree or order of any Court or other authority, no grant shall be paid to, -

(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;

(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the academic

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year 1991-1992 in a private school in existence on the date of such commencement.

Explanation.- For the purpose of this section, private school includes a minority school."

"**Rule 11. Payment of grant.-**

(1) Recognised private schools may be paid grants from State funds directly or through Panchayat Unions. Such payment of grants shall be subject to Government orders and instructions issued from time to time:

Provided that, schools whose recognition have been withdrawn shall not be entitled to any grant for the period of such withdrawal of recognition.

(2) .....

(3) .....

(4) .....

(5) Not withstanding anything contained in the Act or in any other law for the time being in force or in any decree, order or direction of any Court or other authority-

(i) no private school shall, only on the ground of having been granted recognition under the Act, be entitled to any grant or other financial assistance from the Government;

(ii) the Government may, subject to-

(a) the availability of funds;

(b) the norms and conditions specified in the Grant-in-Aid Code of Tamil Nadu Education Department.

(c) the condition that every private school receiving any grant or financial assistance from the Government levies and collects from the pupils only such fee, charges or other payment as may be specified by the competent authority, which shall not be in excess of the fee, charge or other payment levied and collected from the pupils studying in the schools or institutions established and administered or maintained by the State Government, or any local authority in the locality;

(d) the rules, orders and notifications issued by the Government, from time to time; and

(e) such other conditions as may be prescribed by Government to the private school grant or other

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financial assistance at such rate and for such purposes as may be prescribed. "

9. Section 14-A was inserted by Tamil Nadu Act 11 of 1999. It i useful to refer the statement of objects and reasons.

"**STATEMENT OF OBJECTS AND REASONS**

The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974) provides for the regulation of the private schools in the State. At present the policy of the Government is to continue to pay grant to the private schools receiving grant from the Government before the date of the commencement of the academic year 1991-1992 and not to pay the grant to new private schools established and new class and course of instructions opened in any existing private schools after the commencement of the said academic year. It is proposed to give statutory protection to the above policy of the Government. It is also proposed to enable the Government to exempt any person or class of persons from possessing the qualification relating to age and experience for appointment as teacher subject to certain conditions.

2. The Bill seeks to give effect to the above decision. "

10. It is also relevant to mention that Article 30 of th Constitution of India enables all minorities, whether based o religion or language, to have the right to establish and administe educational institutions of their choice. As per sub-clause (2), th State shall not, in granting aid to educational institutions discriminate against any educational institution on the ground that i is under the management of a minority, whether based on religion o language.

11. With this background, let us consider the points urged by th Educational Institutions and the defence taken by the State. Mr. Isaa Mohanlal, learned counsel appearing for some of educationa institutions, submitted that the impugned provision, viz., Section 14 A of the Act violates fundamental rights enshrined under Part III o the Constitution of India, particularly Articles 21 and 21-A. Articl 21-A of the Constitution mandates that the State shall provide fre and compulsory education to all children of the age of six to fourtee years. He highlighted that the right to pre-education of childre below 14 years of age flows from Articles 21 and 21-A of th Constitution. He also emphasised that a child has the fundamenta right of free education upto the age of 14 years. In ***Mohini Jai***

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(Miss) vs. State of Karnataka and others (1992 93) SCC 666, th Hon'ble Supreme Court has emphasised the protection of life an personal liberty as well as right to education as guaranteed i Articles 21 and 21-A of the Constitution of India as under:

> "12. **"Right to life"** is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.
>
> 13. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.
>
> 14. The **"right to education"**, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. Increasing demand for medical education has led to the opening of large number of medical colleges by private persons, groups and trusts with the permission and recognition of State Governments. .... "

12. In ***Unni Krishnan,J.P. And others vs. State of Andhra Prades and others (1993 (1) SCC 645),*** the directions issued by thei Lordships in paragraphs 175 and 176 are relevant.

> "175. Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality - at least now. Indeed, the National Education Policy 1986 says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may,

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we hold that a child (citizen) has a fundamental right to free education upto the age of 14 years.

176. This does not however mean that this obligation can be performed only through the State Schools. It can also be done by permitting, recognising and aiding voluntary non-governmental organisations, who are prepared to impart free education to children. This does not also mean that unaided private schools cannot continue. They can, indeed, they too have a role to play. They meet the demand of that segment of population who may not wish to have their children educated in State-run schools. They have necessarily to charge fees from the students. .... "

13. In ***State of Himachal Pradesh vs. Himachal Pradesh Stat Recognised & Aided Schools Managing Committees and others (1995 (4 SCC 507),*** the following observations/ conclusion are relevant:

"14. The Constitution Bench, emphasising the constitutional policy as disclosed by Articles 41, 45 and 46 read with Article 21 of the Constitution of India, held as under:(SCC pp735-737, paras 175 and 182)

"Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality - at least now. Indeed, the National Education Policy 1986 says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education upto the age of 14 years.

The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development. "

15. .... This Court has authoritatively held that the State is under an obligation to provide free education to the children upto the age of fourteen. We take judicial notice of the fact that, ordinarily, a child in this country joints school at the age of five years. All the children studying in the Middle Schools would be less than fourteen. Therefore, the State Government is under an obligation to provide free education to the children studying in the 54 non-government Middle Schools. ..... "

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16. The constitutional mandate to the State, as upheld by this Court in Unni Krishnan case (cited supra) to provide free education to the children upto the age of fourteen - cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity."

14. In ***Chandigarh Administration and others vs. Rajni Vali (Mrs. and others (2000 (2) SCC 42)***, in para 6 their Lordships have held tha the position has to be accepted as well settled that imparting primar and secondary education to students is the bounden duty of the Stat Administration. It is a constitutional mandate that a State shal ensure proper education to the students on whom the future of th society depends.

15. In ***T.M.A. Pai Foundation and others vs. State of Karnatak and others (2002 (8) SCC 481)***, it is held,

"**Q.9.**: Whether the decision of this Court in Unni Krishnan,J.P. v. State of A.P. (1993 (1) SCC 645) (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration / modification and if yes, what?

A. The scheme framed by this Court in Unni Krishnan case and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. ... "

16. The concept of education is the most fundamental necessity i any democracy as reiterated in **Mohini Jain's case, Unni Krishnan' case** and in ***Inamdar P.A. vs. State of Maharashtra (2005 (4) CTC 81)*** It is apt to quote a passage from the address made by **Hon'ble Mr Justice Shivaraj V. Patil**, in New Delhi at the 10th **Justice Sunand Bhandare** Memorial Lecture in 2004, which runs as under:

"Children are the supreme asset of any nation, they being the greatest gift to humanity. Children are the potential and useful human resources for the progress of the country. ... We should remember and remind ourselves that it is only strong knowledgeable and virtuous children who can make the country strong and great. "

17. Mr. **Issac Mohanlal** and Mr. **Jerome** and other counsel b pointing out the principles laid down in **Mohini Jain, Unni Krishna and TMA Pai Foundation** cases, submitted that recognised Privat

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Schools shall provide free education. The schools are set up with hug investments. No State funds are given either for construction or fo maintenance. In such circumstances, they submitted, the State shoul at least provide Teaching Grant for salary of the staff, particularl in the wake of prohibition of collection of fee. It is also thei claim that Private Schools are not business houses and they canno survive without public funds. It is not possible to have School without State Aid, particularly in the wake of restriction o collection of fee. In this connection, they have placed heavy relianc on the following case-laws:

> ***"(i) In Re The Kerala Education Bill (AIR 1958 SC 956);***
>
> ***(ii) St. Stephen's College vs. University of Delhi (1992 (1) SCC 588); and***
>
> ***(iii) State of Tamil Nadu and 4 others vs. Melapalayam Muslim Magalir Kalvi Sangam (1997 (3) Law Weekly 94)."***

18. Mr. **R. Viduthalai,** learned Advocate General placing relevan materials before us, highlighted that the impugned provision, viz. Section 14-A inserted by Section 6 read with Section 1(2)(b) of Tami Nadu Recognised Private Schools (Regulation) Amendment Act, 1998 doe not suffer from any unconstitutionality. At the foremost, he relied o the decision of the Supreme Court in the case of ***Menaka Gandhi vs Union of India reported in AIR 1970 SC 597,*** decided by a Seven Judg Bench of the Hon'ble Supreme Court, wherein it is held that th approach to be adopted by the Court in adjudging the constitutionalit of a statute should be on the touchstone of fundamental rights. Whil answering the question,

> **"What is the test or yardstick to be applied for determining whether a statute infringes a particular fundamental right"**

After considering all earlier decisions, their Lordships hav concluded,

> "68. ......The pith and substance theory was thus negatived in the clearest terms and the test applied was as to what is the direct and inevitable consequence or effect of the impugned State action on the fundamental right of the petitioner. It is possible that in a given case the pith and substance of the state action may deal with a particular fundamental right but its direct and inevitable effect may be on another fundamental right and in that case the State action would have to meet the challenge of the

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latter fundamental right. The pith and substance doctrine looks only at the object and subject-matter of the State action but in testing the validity of the State action with reference to fundamental rights, what the Court must consider is the direct and inevitable consequence of the State action. Otherwise, the protection of the fundamental rights would be subtly but surely eroded. "

19. While considering the constitutionality of or interpretin any legislation, the following conclusion in ***Bombay Dyeing Manufacturing Co., Ltd., vs. Bombay Environmental Action Group an others (2006 (3) SCC 434)*** is relevant:

"123. For the forgoing reasons, we are of the opinion that in cases where constitutionality and/or interpretation of any legislation, be it made by Parliament or an executive authority by way of delegated legislation, is in question, it would be idle to contend that a court of superior jurisdiction cannot exercise the power of judicial review. A distinction must be made between an executive decision laying down a policy and executive decision in exercise of its legislation-making power. A legislation be it made by Parliament/legislature or by the executive must be interpreted within the parameters of the well-known principles enunciated by this Court. Whether a legislation would be declared ultra vires or what would be the effect and purport of a legislation upon interpretation thereof will depend upon the legislation in question vis-a-vis the constitutional provisions and other relevant factors. ... "

20. In ***People's Union for Civil Liberties vs. Union of Indi [2004 (2) SCC 476]***, their Lordships have held that a statute carrie with it a presumption of constitutionality and such a presumptio extends also to a law which has been enacted for imposing reasonabl restrictions in the fundamental right. Their Lordships have also hel that a further presumption may also be drawn that the statutor authority would not exercise the power arbitrarily.

21. In the light of the above principles, now we have to se whether the restriction imposed by inserting Section 14-A viz., tha no grant shall be paid to any class or course of instruction opened o or after the date of commencement of the academic year 1991-1992 in private school in existence on the date of commencement of suc

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academic year, is valid or not? The word **"may"** occurring in sub section (1) makes it clear that the power to give Grant-in-aid to an Private School is a discretionary power vested in the Government. Th grant is given subject to Government Orders and instructions issue from time to time under Rule 11 of the Tamil Nadu Recognised Privat Schools (Regulation) Rules, 1974. The grant is given only to recognised Private School and once the recognition is withdrawn, th School will not be entitled to any grant as laid down in Section 14 o the Act. When the grant is given to a school, it is implied that th School has accepted the conditions subject to which the grant is give and therefore, having accepted the conditions and terms, if a Institution does not carry out the instructions, the Government hav the right to withhold the Grant-in-aide. No right is conferred on th Teachers or the Institution to claim that a particular condition o the grant should not be enforced. While the recognition of a privat school is intended for the purpose of receiving aid from th Government and to train the students for appearing in the examination conducted by the Government, it must follow that the recognitio entitles the institution only to receive grant, but it does not confe a right on it to receive the grant. As rightly argued by the learne Advocate General, it is well settled that the right of education is fundamental right as explained in Mohini Jain and Unni Krishnan case (cited supra), but the right to receive Grant-in-aid from the State i neither a fundamental right nor a statutory right of Educationa Institutions. In other words, it is purely a matter of subjectiv satisfaction of the Government.

22. In ***State of Orissa vs. Aswini Kumar Dash (1998 (3) SCC 613*** the Hon'ble Supreme Court has rejected the contention that the cut-of date prescribed is arbitrary and irrational. In that case, th Teachers in Aided non-governmental Colleges/Educational Institution claimed revised pay scales recommended by the UGC on the basis o recommendations of the State of Orissa and Education and Yout Services Department dated 6.10.1989 and 6.11.1990. They objected t the note attached to para-2 of the Government Resolution date 06.11.1990, as a result of which the higher scales of pay was given t Aided non-government colleges which had received Governmen concurrence and University affiliation for the opening of 3+Degre course by 01.04.1989 and not thereafter. The writ petitions filed b them were allowed by the Orissa High Court. The High Court struck dow the note to para 2 of Government Resolution dated 06.11.1990 and hel that the respondents are entitled to higher scales of pay. The Stat of Orissa filed an appeal before the Supreme Court. It was contende by the respondents, viz., Teachers that the cut-off date, 01.04.198 prescribed in the said two resolutions is arbitrary and irrational The appellant - State of Orissa pointed out that the resolutions deal with the quantum of grant-in-aid which the State would provide, inte alia, to aided non-government colleges. The State would provide th revised scales of pay as per the University Grants Commission' recommendations. The State Government also framed a scheme for suc grant-in-aid considering its own finances, resources and the number o

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educational institutions to which it was required to give such grant Accepting the stand of the State of Orissa, the Supreme Court has hel that no educational institution can claim grant-in-aid as a matter o right. This is a matter of policy, which the State Government wil decide looking to its financial capacity and other relevan circumstances. Their Lordships have further held that since the entir burden of providing grants-in-aid is now on the State, the State ma regulate, by policy, the extent of aid and the Colleges to which i will be given.

23. In ***Unni Krishnan vs. State of Andhra Pradesh (1993 (1) SC 645***, in para 226 (3) it is held that a citizen of this country ma have a right to establish an educational institution but no citizen person or institution has a right much less a fundamental right, t affiliation or recognition, or to grant-in-aid from the State.

24. In ***T.M.A. Pai Foundation vs. State of Karnataka (2002 (8) SC 481)***, while upholding the scheme framed in Unni Krishnan's case an the directions therein, it is held to be unconstitutional that th primary education is a fundamental right. Their Lordships have furthe held that all citizens have a right to establish and administe educational institutions under Articles 19 (1)(g) and 26, however subject to the provisions of Articles 19 (6) and 26 (a) of th Constitution.

25. In ***Islamic Academy of Education vs. State of Karnataka (200 (6) SCC 697)***, the following conclusion of their Lordships is relevant.

> "25. Privately managed educational institutions imparting professional education in the fields of medicine, dentistry and engineering have spurted in the last few decades. The right of the minorities to establish an institution of their own choice in terms of clause 91) of Article 30 of the Constitution of India is recognized; so is the right of a citizen who intends to establish an institution under Article 19 (1)(g) thereof. However, the fundamental right of a citizen to establish an educational institution and in particular a professional institution is not absolute. These rights are subject to regulations and laws imposing reasonable restrictions. Such reasonable restrictions in public interest can be imposed under clause (6) of Article 19 and regulations under Article 30 of the Constitution of India. The right to establish an educational institution, although guaranteed under the Constitution, recognition or affiliation is not.

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Recognition or affiliation of professional institutions must be in terms of the statute."

As stated earlier, Section 14(1) of the Act makes it clear that n private school shall, only on the ground that it has been grante recognition, be entitled to any grant or other financial assistanc from the Government.

26. Mr. **Issac Mohanlal** and Mr. **Jerome**, learned counsel contende that the impugned amendment denies State aid to the Schools which wer not given aid as on 31.05.1991, i.e., the date before the commencemen of the academic year 1991-1992. According to them, this brings ou discriminatory treatment among Schools / courses established an started even before 1991, viz., one set of schools would continue t receive State Aid and another set would continue without State Aid They relied on the decision of the Supreme Court in the case of ***Stat of Maharashtra vs. Manubhai Pragaji Vashi (1995 (5) SCC 730)***, wherein after finding that grants-in-aid to government recognised private la colleges were denied while extending such benefits to recognise private colleges with other faculties, viz., Arts, Science, Commerce Engineering, Medicine etc., by the State of Maharashtra, thei Lordships have held that recognized private law colleges alone wer singled out for hostile discriminatory treatment in violation o Article 14. They have further held that paucity of funds can be n reason for such discrimination.

27. The learned counsel for the petitioners / appellants furthe contended that the crucial date of classification (commencement of th academic year 1991-92) is arbitrary and does not have any nexus to th object sought to be achieved and hence, it is unconstitutional. It i also contended that factually there is no discrimination between th schools/courses established before 1991-92 and after 1991-92 as al these schools are recognised and governed under the same Act an Rules.

28. In the counter affidavit filed by the Government it i explained that fixing of cut-off date, that is the commencement o academic year 1991-1992, from which Government decided not to gran aid is perfectly logical and in order. It is stated that it was durin that period the Government faced severe financial constraints an therefore, the Government culminated in the decision not to gran financial assistance to Educational Institutions. The Supreme court i ***State of Rajasthan vs. Amitlal Gandhi (1971 (2) SCC 342)*** held tha while fixing the pension scheme, the paying capacity of the State i a relevant consideration. Their Lordships further held that the stan of the Government justifying the cut-off date for the payment o pension was **"wholly economic"** and that it cannot be said that th paying capacity is not a relevant or valid consideration while fixin

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the cut-off date. In ***Tamil Nadu Electricity Board vs. R. Veerasam (1999 (3) SCC 414)***, the Supreme Court approved the action of th Electricity Board in introducing pension scheme for the reason o financial constraints as well-founded and valid. A Constitution Benc of the Supreme Court, in ***ST. Stephen's College vs. University of Delh (AIR 1992 SC 1630)*** held that the minority institutions are entitled t be treated with reference to the financial assistance much the sam way as the institutions of the majority communities. Their Lordship further held that the State should lay down reasonable conditions fo obtaining grant-in-aid and for its proper utilisation. As rightl pointed out by the learned Advocate General, in the light of th principles laid down by the Supreme Court in the above judgments, i has to be held that the State Government is entitled to prescrib norms for the grant-in-aid to educational institutions keeping in vie its financial conditions and the State Government has the power t issue administrative instructions relating to grant of recognition an aid, as recognised by this Court as well as the Supreme Court Accordingly, any institution seeking recognition should therefor abide by the rules / norms / conditions prescribed by the Stat Government from time to time. The Management of educationa institutions have established the institutions on their own withou any compulsion from the State Government. In such circumstances, it i obligatory on their part to abide by rules for recognition framed b the State Government. The number of aided schools established from th year 1990-1991 and the financial commitment which has been steepl increasing have been demonstrated by the Government by furnishin facts and figures in Annexures I and II, filed along with thei counter affidavit.

ANNEXURE I(i)

S.No.	***Year***	***PRIMARY***				***MIDDLE***			
		P U schools		***Aided schools***		***P U schools***		***Aided schools***	
		No.of schools	***No.of teachers***	***No.of schools***	***No.of teachers***	***No. of schools***	***No.of teachers***	***No.of schools***	***No.of teachers***
	90-91	22254	64473	5093	28341	3055	23489	1918	27789
1	91-92	22278	65371	5112	29615	3031	23576	1913	27866
2	92-93	22359	66432	5124	29878	3071	23996	1901	27871
3	93-94	22598	67514	5116	29964	3053	23982	1904	27902
4	94-95	22589	67865	5147	30029	3062	24071	1880	27911
5	95-96	22614	67912	5154	30112	2998	24376	1878	27984
6	96-97	22998	68856	5149	30096	2984	25760	1876	28402
7	97-98	22998	68856	5149	30096	2984	25760	1876	28402

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8	98-99	23030	69956	5262	31178	3070	24872	1836	28463
9	99-2000	23270	74911	5205	31017	3137	24874	1829	25272
10	2000-01	23276	76233	5250	30713	3206	27012	1799	23683
11	2001-02	23624	76124	5250	31720	3308	28616	1799	23433
12	2002-03	23813	77948	5252	28925	3863	29152	1805	22642
13	2003-04	24199	78660	5430	28925	4232	29551	1878	22642
14	2004-05	22613	70862	5576	28573	4615	30732	1656	19754
15	2005-06	21906	61009	5255	26108	5458	32262	1716	18383

The percentage of Panchayat Union Schools in the State in respect of Primary Schools is	80.65%
The Percentage of aided schools in the State in respect of Primary Schools is	19.34%
The Percentage of Aided Schools in the State in respect of Primary Schools is	23.91%
The percentage of Panchayat Union Primary is	76.08%

ANNEXURE I(ii)

HIGH SCHOOLS

Sl. No.	Year	Government		Municipal		Aided		Unaided		Total No. of All State Board Schools	Total No.of All State Board Teachers
		No. of schools	No.of Teachers	No.of schools	No.of Teachers	No. of schools	No.of Teachers	No. of schools	No.of Teachers		
1	90-91	1864		83		4				2361	
2	91-92	1872		83		352		66		2373	3499
3	92-93	1883		83		346		84		2396	3500
4	93-94	1889		83		346		94		2412	3500
5	94-95	1902	25946	83	1434	332	8285	121		2438	3566
6	95-96	1915	26132	87	1473	304	7954	139		2445	3555
7	96-97	1932	26164	88	1475	304	7957	140		2464	3559
8	97-98	1917	26002	94	1483	294	7928	144		2449	3541
9	98-99	1986	26236	94	1492	626	7068	96	1097	2802	3589
10	99-2000	2006	26556	103	1433	626	7068	104	1147	2839	3620
11	2000-01	2002	27204	112	1630	610	7268	135	1696	2859	3779
12	2001-02	1981	24083	108	1556	646	7822	179	855	2914	3431

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13	2002-03	1964	23261	109	1539	646	7822	186	817	2905	3343
14	2003-04	1962	23293	111	1543	646	7822	215	817	2934	3347
15	2004-05	1963	23464	110	1401	646	7738	222	1128	2941	3373
16	2005-06	2016	22431	110	1730	613	7646	179	1507	2918	3331

ANNEXURE I (iii)

HIGHER SECONDARY SCHOOLS											
Sl. No.	Year	Government		Municipal		Aided		Unaided		Total No. of All State Board Schools	Total No.of All State Board Teachers
		No. of schools	No.of Teachers	No. of sc	No .of Teachers	No .of schools	No. of Teachers	No .of schools	No.of Teachers		
1	90-91	848		68		674		70		1660	
2	91-92	869		68		674		88		1699	63644
3	92-93	879		68		674		94		1715	63979
4	93-94	891		68		674		98		1731	42329
5	94-95	903	30201	68	3852	674	31143	112		1757	65196
6	95-96	932	30547	69	3873	674	31583	140		1815	66003
7	96-97	1012	31747	70	3888	674	31808	155		1911	67443
8	97-98	1087	32442	75	3938	674	31933	183		2019	68313
9	98-99	1157	38229	78	3953	859	33483	29	1242	2133	76907
10	99-2000	1206	39040	80	3993	884	33483	46	1242	2216	77758
11	2000-01	1258	38744	81	4015	909	33630	68	1636	2316	79025
12	2001-02	1374	40801	90	4089	909	33630	74	916	2447	79436
13	2002-03	1507	42756	92	4128	909	33630	94	1440	2602	81954
14	2003-04	1547	42496	92	4128	909	33630	132	1440	2680	81694
15	2004-05	1576	44639	93	4168	909	33630	149	1884	2727	84321
16	2005-06	1696	50207	93	4068	1062	36851	139	3392	2990	94518

ANNEXURE II

Expenditure details towards the salary for the Panchayat Union and Aided School Teachers

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Rs. in thousand

S.No.	Year	Panchayat Union Schools		Aided Schools	
		Head of account	Amount Rs.	Head of account	Amount Rs.
1	91-92	2202-01-101-AC	3858587	2202-01-102-AD	215422
2	92-93	-do-	4106268	-do-	232374
3	93-94	-do-	4286174	-do-	248618
4	94-95	-do-	4623889	-do-	277889

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5	95-96	-do-	5266571	-do-	308035
6	96-97	-do-	6079817	-do-	356974
7	97-98	-do-	7103519	-do-	402881
8	98-99	-do-	9712299	-do-	560664
9	99-2000	-do-	10614403	-do-	596414
10	2000-01	-do-	10246534	-do-	576656
11	2001-02	-do-	10020346	-do-	569655
12	2002-03	-do-	9419399	-do-	543688
13	2003-04	-do-	9025902	-do-	532318
14	2004-05	-do-	10033869	-do-	560563
			10441918	5667928	1610984

Expenditure for Panchayat Union and Aided Schools for the year 2005 2006. Rs.1,61,09,846.

The Commitment of the Government which was Rs.6012811 (Rupees Si hundred and one Crore Twenty eight lakhs and eleven thousand only) ha now become one thousand six hundred and ten crores ninety eight lakh and forty six thousand.

29. It is demonstrated before us that consequent on the impartin of free education from the year 1964-65, quite large number o management came forward to open new Elementary Schools and to upgrad elementary schools into middle schools; middle schools into Hig Schools; and High Schools into Higher Secondary Schools. Th Government had therefore, to sanction numerous posts and consequentl pay grant to those schools. It is also brought to our notice that after 1960, the Government implemented the Second Pay Commission i 1970, the Third Pay Commission in 1978 and the Fourth Pay Commissio in 1984. Thus, the salary of teachers has been increased manifol consequent on the implementation of revised scales of pay of teachers The financial burden of the Government has also got increased by leap and bounds year after year. It is also highlighted that in spite o the same, the Government has been maintaining payment of aid to al the recognised institutions for the cause of education notwithstanding the fact that major portion of the budget allocatio earmarked for education is being spent for salary items, leaving meager portion for other welfare schemes.

30. It is also demonstrated that after the implementation of th Fifth Pay Commission during 1988, the salary of teachers has go increased enormously. It is stated that because of huge amoun involved, even the Pay Commission arrears could not be pai immediately. Therefore, the Government thought it fit to postpone th payment of aid for a period of three years in respect of new schools higher classes in the existing schools for which recognition wa sought. Accordingly, in letter No.56102/R3/88-2 Education date 29.06.1989, the Government issued orders to grant recognition withou aid for three years making it known that aid would be given only fro 01.06.1994. Even after three years, since the financial position o

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the Government did not improve and continued to be critical and th Government was at the peak of its financial crisis, Government took policy decision not to give financial assistance to the school started from 1991-92. The Government also took a decision tha recognition would be granted to such institutions giving a undertaking that they would not seek grant for ever. Accordingly, onl schools giving an undertaking that they would start schools or upgrad schools with higher classes without seeking aid from the Governmen forever were given opening permission and recognition.

31. Though learned counsel for the petitioners/ appellant vehemently contended that the impugned provision violates th fundamental rights; Articles 21 and 21-A in particular, learne Advocate General, by placing more statistical particulars before us submitted that the mandate under Article 21-A has been fulfilled b the State Government. He also pressed into service **Annexure IV**, whic refers Gross Access Rate.

Annexure IV(i)

SCHOOL ACCESS

GROSS ACCESS RATE (GAR) - PRIMARY

Year	Habitations	Served with upper primary schools	Unserved habitations	GAR
2001-2002	64751	62883	1868	97.10
2002-2003	64846	64105	741	98.90
2003-2004	64846	64846	**	100
2004-2005	64846	64846	**	100
2005-2006	64846	64846	**	100

Annexure IV(ii)

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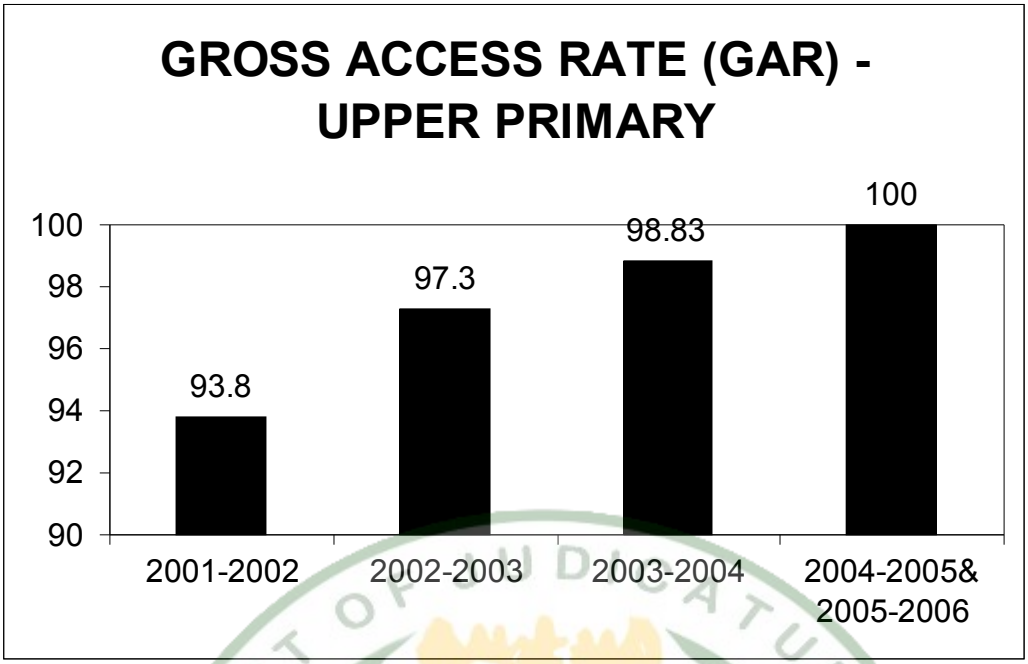

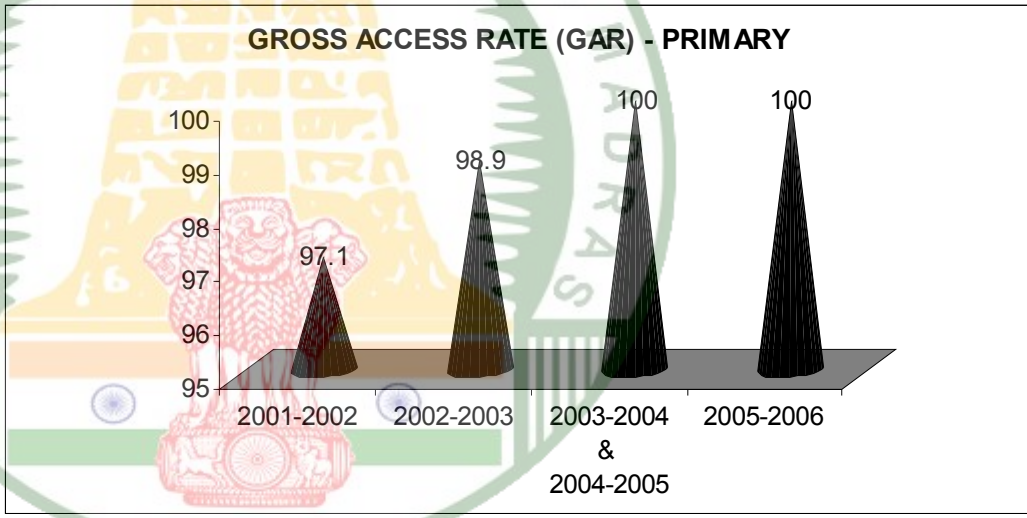

Annexure IV(iii)

GROSS ACCESS RATE (GAR) – UPPER PRIMARY				
Year	Habitations	Served with upper primary schools	Unserved habitations	GAR
2001-2002	64751	60715	4036	93.80
2002-2003	64846	62971	1875	97.30
2003-2004	64846	61168	678	98.83
2004-2005	64846	64846	**	100
2005-2006	64846	64846	**	100

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32. The graphical statements and other particulars in Annexure-I [(i) to (iv)] referred to above indicate that the Gross Access Rate i 100% from the year 2003-2004 in respect of Primary Schools and fro the year 2004-2005 in respect of Upper Primary Schools. There is n reason to reject the statistics furnished by the Government in th form of Annexures along with the counter affidavit. The statistic also show that the State is fulfilling its fundamental duty mandate under Constitution in a satisfactory manner. It is also relevant t mention that even though the amendment was made in 1991-92, the fac that State Government was able to achieve Gross Access Rate in 2003 2004 itself shows the efforts taken by the State in fulfilling it fundamental duty to make free education a reality. Learned Advocat General also highlighted that if literacy rate in Tamil Nadu i compared with that of other States, the State of Tamil Nadu is pioneer in advocating free education policy.

33. It is not in dispute that no Government School or Aide School has denied the right of imparting free education to th children. In fact, there is no allegation to the effect that th Government is refusing to admit or provide education to the childre below 14 years. As rightly observed by the learned single Judge, it i the writ petitioners, who voluntarily started new schools in the area which, according to them, are backward and since they wanted t provide free education without seeking the aid, the Governmen considered their request and granted recognition.

34. The particulars furnished also show that Grand-in-Aid by th State to the educational institutions is a matter which depends upo the economic capacity and decisions of the State. The above view ha been reiterated in Mohini Jain as well as Unnikrishnan case (cite supra) by the Hon'ble Supreme Court. Annexure II referred to abov indicates the expenditure details towards the salary for the Panchaya Union and Aided School Teachers. The expenditure for the year 2005 2006 is stated to be Rs.1,61,09,846/-.

35. Annexure III indicates the expenditure details, if th schools started after 1991-1992 are paid Government aid wherein it i stated that the expenditure for one month would be Rs.1,32,45,168/ and for one year would be Rs.15,89,42,016/-. In the earlier part o our order, we have already mentioned about the implementation of Pa Commission recommendations and consequential increase in the salary o teachers many folds. It is useful to refer details furnished i ANNEXURE III.

ANNEXURE III

PRIMARY SCHOOLS				
S.No	Schools Management-wise	No.of schools	No.of students	No. of required teachers

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1	Minority Self Finance Primary schools.	61		
2	Minority Partly self Finance Primary schools	06	23340	589
3	Non Minority Self Finance schools	106		
4	Non minority partly self finance Primary schools	--		
	Total	173	23340	589

MIDDLE SCHOOLS							
S.No	Schools Management-wise	No.of schools	Students steength		No.of teachers		
			1-5	6-8	BT	Secy	Total
1	Minority Self Finance Primary schools.	30					
2	Minority Partly self Finance Primary schools	26					
3	Non Minority Self Finance schools	39					
4	Non minority partly self finance Primary schools	31	6625	20406	502	163	665
	Total	126	6625	20406	502	163	665

If the schools started after 1991-92 are paid Government aid, th expenditure for one month to Government will be as follows:

1.	173Primary school Headmaster post expenditure	11108 x 173	19,21,684
2.	416 Secondary Grade Teacher post(for Primary schools) expenditure	9420 x 416	39,18,720
3.	163 Secondary Grade Teacher post	9420 x 163	15,35,460
4.	126 BT Headmasters Post (for Middle Schools) expenditure	12324x 126	15,52,824
5.	376 BT Teacher post (for Middle Schools) expenditure	11480x 376	43,16,480
	Total No. of teachers	1254	1,32,45,168

Therefore, it is stated that expenditure or 1254 teachers for on month will come to Rs.1,32,45,168/- and for 12 months it will b Rs.15,89,42,016/- as additional expenditure to Government allows gran to unaided institutions.

36. It is the claim of the learned Advocate General that sinc the State Government has taken a policy decision not to grant Aid t recognised private schools established on or after the academic yea

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1991-1992, the same cannot be lightly interfered with by the Court. I other words, according to him, the policy decisions are exclusivel within the executive domain. By drawing our attention to th statistics furnished in Annexure IV that the State Government ha achieved 100% Gross Access Rate in primary school level in the yea 2003 itself, learned Advocate General submitted that while fulfillin the constitutional mandate of providing free education to al children, it is not in need of any more private schools to achieve th goal. By showing those details, the learned Advocate General ha requested that the economic situation which the State is facing mus be viewed in the light of judgment of Apex Court in **Unnikrishnan** cas (cited supra). The following conclusion of their Lordships i relevant.

> "181. ***Right to education after the children/citizen completes the age of 14 years.*** The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III - we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State. "

37. In ***State of Rajasthan vs. Amritlal Gandhi (1997 (2) SCC 342*** the Supreme court has held that financial impact of making th Regulations retrospective can be the sole consideration while fixing cut-off date. In that decision, their Lordships have held that payin capacity is a relevant consideration.

38. The learned counsel for the petitioners / appellants nex argued that the impugned provisions would frustrate the Schem enunciated in the Act and Rules. According to them, free educatio policy is the hub on which the whole scheme rests and as a corollary the collection of fee, charge or donation is prohibited. In support o the above contention, they also pressed into service **Sections 32(2 and Rules 9(2)(e) and 23 of the Act and Rules**. As per **sub-section (2 of Section 32,** only on prior approval of the competent authority, th Private Schools are permitted to continue to levy fees or charges **Rule 9(2)(e)** makes it clear that the educational agency shall no compulsorily collect fees or donation other than those permitted b the competent authority under Rule 23 from pupils or parents or an

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other persons for any purpose. On going through the entire Scheme o the Act, including the relevant provisions of the Act and Rules, w are satisfied that the amended provisions do not frustrate the Schem of the Act. Regard may also be had to Sections 14(1), 5(2)(c)(vi), 5 (2)(c)(vii) of the Act and Rules 11 (1) and 11(5) (i) of the Rules. A pointed out, under Sections 5(2)(c)(vi) and 5A((2)(c)(vii), th application for permission to start a private school must indicate th source of income to ensure the financial stability of Private School That is why, in the application the person intending start a ne private school have to furnish his financial capacity/stability Therefore, the contra argument made by the learned counsel for th petitioners / appellants cannot be accepted.

39. If the Government allowed grant to unaided institution, i has to incur the following expenditure.

Abstract – (1)

Sl.No	Schools – Management-wise	Rs.Per Month
1	For fully Un-aided High schools expenditure for teaching staff per month	1,64,39,360
2	For partly Un-aided high Schools the expenditure for teaching staff per month	1,38,90,800
3	For Fully Un-Aided higher Secondary Schools Expenditure for teaching staff per month	3,01,47,710
4	For partly un-Aided Higher Secondary Schools the expenditure for teaching staff per month	4,83,49,250
5	For fully & partly Un-Aided high & Higher Secondary Schools the expenditure for Non-teaching staff per month	1,60,75,125
	Total per month	12,49,02,245

Therefore it is stated that the expenditure for one month i Rs.12,49,02,245/- and for 12 months, it will be Rs.149,88,26,940/- a additional expenditure to Government if the Government allow grant t Un-Aided institutions."

Abstract – (2)

HIGH SCHOOLS

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S.No.	Schools-Management wise	No.of schools	No.of required teachers	Expenditure in crores
1	Fully Un-aided High Schools	179	1432	19.73
2	Partly Un-aided High schools	242	1210	16.67
Higher Secondary Schools				
1	Fully Un-Aided Higher Secondary Schools	139	2363	36.18
2	Partly Un-Aided Higher Secondary Schools	265	3710	56.02

Abstract – (3)

If the School started after 1991-92 are paid Government aid, th expenditure for one month to Government will be as follows:

(a) Fully Un-Aided High Schools

	No. of Un-Aided High Schools -179	Expenditure for one month – Rs.
1	For one Head master post per school the expenditure	179 x 1 x 13540=24,23,660
2	For 5 BT Assistant Post per School, the expenditure	179 x5x11480=1,02,74,6700
3	For 1 Tamil Pandit post the expenditure	179x x 11480 = 20,54,920
4	For 1 PET Post the expenditure	179 x 1 x 9420=16,86,180
Total		1,64,39,360
(For 12 months, the expenditure will be Rs.19,72,72,320)		

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(b) Partly Un-Aided High Schools

	No. of Partly Un-Aided High Schools -242	Expenditure for one month – Rs.
1	For one Head master post per school the expenditure	242 x 1 x 13540=32,76,680

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2	For 2 BT Assistant Post per School, the expenditure	242 x2x11480=55,56,320
3	For 1 Tamil Pandit post the expenditure	242 x1x 11480 = 27,78,160
4	For 1 PET Post the expenditure	242x1x9420=22,79,640
Total		1,38,90,800
(For 12 months, the expenditure will be Rs.16,66,89,600)		

Abstract (4)

(a) Fully Un-Aided Higher Secondary Schools

	No.of Un-Aided Higher Secondary Schools - 139	Expenditure for one month -Rs.
1	For one Head master Post per School-the expenditure	139x1x16730 = 23,25,470
2	For 8 P.G. Assistant post per School - the expenditure	139x8x13540 = 1,50,56,480
3	For one Physical Director	139x1x13540 = 18,82,060
4	For 5 B.T. Assistant	139x5x11480 = 79,78,600
5	For 1 Tamil Pandit post the expenditure	139x1x11480 = 15,95,720
6	For 1 Physical Education Teacher	139x1x9420 = 13,09,380
Total		3,01,47,710
(For 12 months the expenditure will be Rs.36,17,72,520)		

(b) Partly Un-Aided Higher Secondary Schools

	No. of partly un-aided Higher Secondary Schools - 265	Expenditure for one month -Rs.
1	For one Head master Post per school the expenditure	265x1x16730 = 44,33,450
2	For 8 P.G. Assistant post per school the expenditure	265x8x13540 = 2,87,04,800
3	For one Physical Director per school	265x1x13540= 35,88,100
4	For 2 B.T. Assistant	265x2x11480 = 60,34,400
5	For 1 Tamil Pandit post the expenditure	265x1x11480 = 30,42,200
6	For 1 Physical Education Teacher	265x1x94240 = 24,96,300
Total		4,83,49,250
(For 12 Months the expenditure will be Rs.58,01,91,000/-)		

5.Non-teaching post of High & Higher Secondary Schools (Fully & Partly Un-Aided High & Higher Secondary Schools)

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S.No	Name of Post	No.of schoos	Expenditure
1	Junior Assistant one post per School	825x1x5450	44,98,250
2	Record Clerk one post per School	825x1x4743	39,12,975
3	Office Assistant one post per school	825x1x4646	38,32,950
4	Watchman one post per school	6825x1x464	36,32,950
Total			1,60,75,125
(For 12 months the expenditure will be Rs.19,29,01,500/-)			

40. Now, let us consider the undertaking given by the Schools a the time of Grant of Recognition and whether the same would operate a estoppel against them. The learned counsel for the petitioners appellants vehemently contended that the undertaking given by th Schools at the time of granting recognition are non-est in law inasmuch as they obtained consent without any statutory basis, suc undertaking cannot operate as estoppel against the plea o discrimination and violation of constitutional rights.

41. In support of the above contention, the judgment of thi Court in ***Roman Catholic Society vs. The Government of Tamil Nadu (199 WLR 1300)*** was pressed into service. When similar stand was taken o behalf of the State, the Division Bench refused to accept the same an expressed that what Article 30 enshrines as a fundamental right cannot be bartered away or surrendered by any voluntary act and i cannot be waived. The Bench further held that, while there may not b a fundamental right to aid, yet, if in the matter of grant of aid, th State chooses to discriminate, the voice of protest in this behalf b the aggrieved minority cannot be stifled on any principle of waiver It is stated on the side of the State that the said decision is unde challenge by way of an appeal and the same is pending before th Supreme Court. Even otherwise, as pointed out by the learned Advocat General, the amended provision is applicable to all the privat schools, including the minority, hence, the said decision is no helpful to the case on hand.

42. In ***North Coorg Higher Education Society vs. State o Karnataka (AIR 1996 Karnataka 301),*** the learned single Judge ha observed that the grant could not be refused on the ground that th institution had given undertaking that it would never claim any grant The learned Judge further observed that the said undertaking i against the Rules. It is not in dispute that in the case on hand there is no such rule or statute, hence, the said decision is also no helpful to the petitioners case.

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43. In ***C. Manonmony vs. State of Tamil Nadu (2006 (3) MLJ 242)*** the learned single Judge has held that want of finance cannot be ground to deny the sanction of post to an Aided School and the same i not with reference to the undertaking given at the time o recognition. At this juncture, it is useful to refer the stand of th Government as explained in para-16 of the counter affidavit, wherei it is stated that the implementation of Fifth Pay Commission, 1988 le to a hike in the pay of teachers as never before, which is an adde financial burden to the State exchequer. It is also stated that large number of management applied for starting schools during 1991-9 and it was just not possible for the Government to grant recognitio with aid because of paucity of funds and as the Government was at th peak of its financial crisis, it took a policy decision not to giv financial assistance to the schools started from 1991-92. It i further stated that the Government took a decision that recognitio would be granted to such institutions which give an undertaking tha they are not seeking grant and will not seek grant forever Accordingly, only schools which gave an undertaking that they wer willing to start school or to upgrade school with higher classe without seeking aid from Government forever were given openin permission and recognition. The Government in their letter Ms.No.8 Education (R1) Department, dated 29.01.1993 approved an agreemen form, in which the management of private unaide primary/middle/high/higher secondary schools, which seek permission t open new schools/recognition for newly started schools/recognition fo existing schools which have been upgraded, had to enter into a agreement with the Director of School Education, giving an undertakin for the non-claim of aid from the Government forever.

44. According to the Government, the management, which wanted t start schools from 1991-92 were well aware of the fact that Governmen would not grant any aid, and voluntarily came forward to start school in spite of the condition imposed by the Government. The managemen gave the undertaking that they would not claim aid and obtaine opening permission followed by recognition. With total conscious o the implications of the condition imposed by the Government and th undertaking given, the management came forward to start schools. I such circumstances, as rightly pointed out, the Government did no thrust anything on the management. It is also brought to our notic that all institutions, whether minority or non-minority have bee granted recognition without aid forever and there is no discriminatio in this regard. True it is, the undertakings given by the managemen are not binding, however, it cannot be claimed that the management o schools are not aware of the circumstances. We have already explaine the circumstances under which the Government brought in the impugne amendment which is applied to all, whether minority or non-minorit institutions. In view of the reasons and position of the Government i financial aspects as well as of the fact that the Government reache the 100% Gross Access Rate even in 2003-2004 with the existin

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schools, we are unable to accept the claim made by the learned counse for the petitioners / appellants.

45. With regard to the contention relating to the violation o Articles 30 (1) and (2) of the Constitution, it is the definite cas of the State that it has in no way infringed the right of minoritie to establish and administer educational institutions of their choic under Article 30(1). As rightly argued by the learned Advocat General, it is not correct to say that the right to establish an administer educational institutions of their choice includes the righ to receive grant-in-aid for such establishment and administration a it would amount to reading too much into the provision. Grant-in-ai is an economic concept that would always depend upon the subjectiv satisfaction, financial stability and resources as well as th discretion of the State Government. It is also a matter of polic decision within the domain of the executive and not a matter o principle to be laid down by the legislature.

46. **Article 30(2)** only speaks about non-discrimination betwee minorities and non-minorities in the subject of grant-in-aid. Th policy of the State Government covers all private schools on or afte 1991-92 or those in existence during the academic year 1991-92, bu not receiving aid before 1991-92, uniformly without any reference t their minority or non-minority status. Thus, we are satisfied tha **Article 30(2)** is not attracted.

47. Annexure III gives an overall view of the number of school opened from the academic year 1991-92 and granted recognition so fa with details of additional expenditure that Government will have t incur if aid is paid. The number of Aided Schools established from th year 1990-91 and the financial commitment which has been steepl increasing are clearly shown in Annexure I and II. The number o Primary and Middle Schools opened over the past five years and th Gross Access Rate are furnished in Annexure IV. These figures clearl indicate that the Government is always keen in opening school depending on the need of the locality and it has never waited for th management to open schools.

48. As rightly pointed out, the recognition cannot be linked wit aid and the recognition is not a pre-condition for aid, nor is aid precondition for recognition. The State has all powers to enforc norms and impose conditions as a pre-requisite for recognition. A discussed earlier, aid is not automatic and cannot be claimed as matter of right. The facts and figures furnished in the Annexure which we have already referred to in the earlier part of our orde clearly show that the State has been fulfilling its obligation unde Article 45 of the constitution safeguarding the fundamental right t education and the management cannot claim that in order to help th

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State to fulfill its Constitutional obligation, aid must be granted t their schools.

Under these circumstances, we hold that the impugned provision viz., Section 14-A of the Tamil Nadu Recognised Private Schools (Regu lation) Act does not violate any of the provisions of the Constitutio and the same is constitutionally valid. Grant-in-aid is neither a fun damental right, nor a statutory right and it depends upon the economi capacity of the State. There is no allegation or dispute as to th fact that the Government is providing free education to the childre below 14 years. The particulars furnished show that no Governmen School or Aided School is denied the right of imparting free educatio to the children. The State Government, taking note of various aspect including the fact that it has achieved Gross Access Rate in the yea 2003-2004 itself in fulfilling the constitutional mandate of providin free education to all children and that it is not in need of any mor Private Schools in its efforts to achieve the goal of providing fre education, has taken a policy decision not to grant aid to privat schools established on or after the academic year 1991-92. Inasmuch a the policy decisions are exclusively within the executive domain an in the light of the facts and figures furnished in the Annexures whic we have referred to in the earlier paragraphs, we are satisfied tha there is no merit in the claim made by the petitioners. Consequently the writ appeals as well as writ petitions filed by the Educationa Institutions and others fail and they are, accordingly, dismissed. N costs. Connected WP.M.Ps. are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Kh

TO

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3 ccs to Government Pleader, SR.52702, 52703, 52105
1 cc to Mr.K.Ravichandrababu, Advocate, SR.53037
1 cc to Mr.Issac Mohanlal, Advocate, SR.52861
1 cc to Mr.S.N. Ravichandran, Advocate, Sr. 52136
12 ccs to Mr.M.Joseph Thatheus Jerome, Advocate, SR.Nos.52169, 52168, 52170.
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1 cc to Mr.A.Immanuel, Advocate, SR.52399
1 cc to Mr.I.Arokiasamy, Advocate, SR.53109

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and 3812 of 2001.

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